HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5509 OF 1996.

Rajiv Smruti Bahu
Uddeshiya Sanstha Barshi,
Dist: Solapur. ..Petitioner.

Versus.

1. The State of Maharashtra
Through: Secretary, Ministry
Social Welfare, Mantralaya.

2. The Director of Social Welfare
Maharashtra State, Pune

3. Tahsildar Barshi,
Dist: Usmanabad.

4. Tahsildar Bhoom,
Dist: Solapur.

5. Shri. Hemant Mohan Sonawane

6. Tanaji Thombre.

7. The Deputy Collector
& Sub-Divisional Magistrate,
Bhoom. Dist: Solapur. ..Respondents.

Shri. Girish S. Godbole for the Petitioners.

Shri. S.G.Kudale for the respondent No.5.

Smt. V.S.Gokhale, AGP for the Respondent -State.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : JANUARY 9, 2006.

ORAL JUDGMENT (PER D.G.KARNIK,J.)

1. Heard learned counsel for the appearing parties. The petitioner is a Charitable Trust

registered under the provisions of the Bombay Public Trusts Act, 1950 and runs a school for disabled children, viz., mentally retarted children. We are informed that the petitioner has applied for the grant-in-aid. However at the time of the presentation of the petition no grant was sanctioned by the State Government. Learned counsel for the Petitioner is not aware of the position as on today. Respondent Nos. 5 & 6 claim to be the office bearers of the unregistered association of the employees of the school conducted by the Petitioner.

2. It appears that in the year 1996, the petitioner was facing financial problems and its application for grant from the State Government was pending. The petitioner was, therefore, unable to pay salary to all its employees. Salary was in arrears for several months. The employees of the school, therefore, were agitating the matter and finally resorted to hunger strike. Apprehending law and order problem, Executive Magistrate intervened in the matter and settlement was arrived at between the parties with the good offices of the Executive Magistrate. A copy of the settlement dated 6th September 1996 is annexed at Exhibit-F to the petition. Under the said settlement, the petitioner agreed to pay to the

employees arrears of salary which was then in arrears for 7 (seven) months, in instalments of Rs. 800/- per month. It appears that petitioner was unable to pay the arrears of salary despite its promise to make the payment made on 6th September, 1996. Therefore, another meeting was held between the parties on 22nd October, 1996 and a second settlement was signed by the petitioner-society and the agitating members. The Executive Magistrate appears to have countersigned the said settlement. A copy of settlement is annexed at Exhibit-F to the petition.

3. Learned Counsel for the petitioner submitted that petitioner was persuing the application made by it with the State Government for release of the grant-in-aid and had signed the said settlement in expectation that grants would be sanctioned and released. However, as the grants were not released, the petitioner was unable to pay the arrears of salary as promised by it in the said settlements dated 6th September, 1996 and 22nd October, 1996. We have no doubt in our mind, whether grant is released or not the petitioner is bound to pay the salary to its employees. The question, however, is whether the respondents, i.e., the State and its officers can enforce the said settlements by coercive means.

4. It is the grievance of the petitioner that the Tahsildar- the respondent no.4 started writing letters to the petitioner - Institution calling upon it to make the payment of salary in arrears. Copies of the letters dated 16th October, 1996, 17th October, 1996, 11th October, 1996 are annexed to the petition. By the letter dated 21st October, 1996 the Executive Magistrate, the respondent No. 7 threatened the petitioner that if the salary was not paid to the employees, legal action would be taken against it. The petitioners have filed this petition impugning the said letter and for direction that respondent Nos. 1 to 4 and 7 i.e. the Government and its officers, not to enforce the settlements by coersive means through the machinery of the State.

5. Shri V.S. Gokhale, the learned AGP appearing for the State was unable to point out any provision of law conferring power on the Executive Magistrate to enforce the settlements, arrived at and between the parties probably at the instance of the Executive Magistrate. As an Executive Magistrate, it may be a part of his duty to prevent any law and order problem; however, he does not have any authority in law to make recoveries for the emoployees of a Trust to

pay to the employees their salary. We repeat, the Petitioner is bound to pay salary to its employees. However, if the salary is not paid, it is open to the employees to persue an appropriate remedy as may be available in law to them including filing of a suit for recovery of money. As an Executive Magistrate-respondent no. 7 has no right or authority to take any coercive steps against the petitioner for non-payment of salary of the workmen. In the circumstances, we are satisfied that the communications sent by the respondent No. 7, calling upon the petitioner to pay the salary to its employees, or face a legal action are without any authority of law need to be quashed, and they are accordingly quashed. The petition is accordingly allowed. Rule is made absolute in terms of prayer clause (a).

6. In the facts and circumstances of the case, the parties shall bear their own costs.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**